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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,433	02/27/2004	Desmond Margetson	238.005A	2800

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EXAMINER

HOOK, JAMES F

ART UNIT PAPER NUMBER

3752

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/786,433

Applicant(s)

MARGETSON, DESMOND

Examiner

James F. Hook

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Brown. The patent to Brown discloses the recited elongated metal straw A,B provided with a plurality of perforations a,b at one end thereof to act as a filter against any particles in a liquid to be consumed when the inserted end is placed in a drinking vessel, where it is considered merely intended use to press it vertically into the vessel, however, the straw of Brown is capable of being inserted into the vessel vertically as is also suggested by the figures.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown. The patent to Brown fails to disclose which type of metal is used, however, it is considered merely a choice of mechanical expedients to choose any metal capable of use with the invention, where stainless steel is an old and well known metal used in the

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presence of liquids to prevent rust, where it would be undesirable to have a utensil that is to be used for imbibing fluids have rust thereon, therefore it would have been obvious to one skilled in the art to use any type of metal for forming the straw of Brown including using stainless steel, as such is a known metal used in the presence of liquids which is superior to other metals in that it does not rust, which would make the utensil more suited for use for imbibing fluids as such is merely a choice of mechanical expedients requiring only routine skill in the art to utilize the more desirable material.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Sussman. The patent to Brown discloses all of the recited structure with the exception of reciting the actual size of the holes used. The patent to Sussman discloses the recited straw comprising a plurality of perforations A,A', where the holes are disposed on each end of the straw, the straw can be made of any suitable material including paper, glass, and plastic, where at least one set of holes would be within the drinking vessel during use, the holes can be formed of a diameter of 0.01 inches which converts to approximately 0.25mm. It would have been obvious to one skilled in the art to modify the holes in Brown to be of any size including 0.25mm in diameter as suggested by Sussman as such teaches the desirable size of holes used in a drinking straw provided with holes and what is old and known as in the art, where such would insure that less particles would enter the straw and at the same time would add aeration to make the fluid being imbibed more appealing.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sussman in view of Smaczny. The patent to Sussman discloses all of the structure set

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forth above with the exception of disclosing that the straw can be formed of metal, specifically stainless steel. The patent to Smaczny discloses that it is old and well known in the art of straw making that drinking straws can be formed of various materials including various metals and plastics. It is considered merely a choice of mechanical design to use stainless steel as a specific type of metal as such is an old and well known metal used where rust is undesirable on a metal item to be exposed to liquids. It would have been obvious to one skilled in the art to modify the straw in Sussman to be made of any material, as Sussman suggests, where it is known in the art that metal can be used in place of plastic when forming drinking straws as suggested by Smaczny, where such would be sturdier than plastics and less breakable than glass, and where the use of stainless steel is considered an obvious choice of mechanical expedients where any suitable metal can be used and stainless steel is old and well known for its properties of resistance to rust in the environment of liquids.

### ***Conclusion***

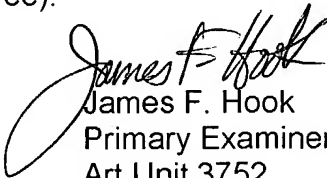
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Mitchell, Stoessel, Mack, Lottick, Williams, III., Wilk, Saito, Adaska, Manning, and Whiton disclosing state of the art straws and pipes, some provided with holes or of metal.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (703) 308-2913. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (703) 308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
James F. Hook  
Primary Examiner  
Art Unit 3752

JFH